

AMENDED IN SENATE AUGUST 8, 2012

AMENDED IN ASSEMBLY MAY 30, 2012

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AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2610

Introduced by Assembly Member Skinner
(Coauthor: Assembly Member Carter)

February 24, 2012

An act to amend ~~and repeal~~ Section 2924.8 of the Civil Code, and to amend ~~Section~~ *Sections* 415.46 of, and to amend and repeal ~~Sections and 1161b and 1161e~~ of; the Code of Civil Procedure, relating to tenants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2610, as amended, Skinner. Tenants: foreclosure and unlawful detainer.

(1) Existing law requires a notice of sale to be posted before any power of sale can be exercised under the power of sale contained in any deed of trust or mortgage. Existing law, until January 1, 2013, requires a resident of property upon which a notice of sale has been posted to be provided a specified notice advising the resident that, among other things, if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 60-day eviction notice, and that other laws may prohibit the eviction or provide the tenant with a longer notice before eviction. Existing law makes it an infraction to tear down the notice within 72 hours of posting. Existing law requires a state

government entity to make translations of the notice available in 5 specified languages, for use by a mortgagee, trustee, beneficiary, or authorized agent, in order to satisfy the notice requirements.

This bill would revise certain portions of the notice to instead require a resident of property upon which a notice of sale has been posted to be advised that if the person is renting the property, the new property owner may either give the tenant a new lease or rental agreement, or provide the tenant with a 90-day eviction notice. The bill would require the notice to advise a tenant who has a lease that the new property owner is required to honor the lease unless the new owner will occupy the property as a primary residence or under other limited circumstances. The bill would require the Department of Consumer Affairs to make translations of the notice available, as described above. The bill would provide that these changes to the notice would become operative on March 1, 2013, or 60 days following posting of a dated notice incorporating those amendments on the Department of Consumer Affairs Internet Web site, whichever date is later. The bill would extend the operation of these provisions until December 31, 2019.

By extending the operation of provisions establishing a crime, this bill would impose a state-mandated local program.

(2) Existing law provides, that in an unlawful detainer action, if an owner or owner's agent has obtained service of a prejudgment claim of right to possession, as specified, no occupant of the premises, whether or not that occupant is named in the judgment for possession, may object to the enforcement of the judgment, as specified.

This bill would provide that in any action for unlawful detainer resulting from a foreclosure sale of a rental housing unit pursuant to specified provisions, the above provisions regarding objection to the enforcement of a judgment do not limit the right of a tenant or subtenant to file a prejudgment claim of right of possession or to object to enforcement of a judgment for possession, regardless of whether the tenant or subtenant was served with a prejudgment claim of right to possession, as specified.

(3) Existing law, until January 1, 2013, requires a tenant or subtenant in possession of a rental housing unit at the time that property is sold in foreclosure to be provided 60 days' written notice to quit before the tenant or subtenant may be removed from the property, as specified.

This bill would instead require a tenant or subtenant in possession of a rental housing unit under a month-to-month lease at the time that property is sold in foreclosure to be provided 90 days' written notice

to quit before the tenant or subtenant may be removed from the property. The bill would provide tenants or subtenants holding possession of a rental housing unit under a fixed-term residential lease entered into before transfer of title at the foreclosure sale the right to possession until the end of the lease term, except in specified circumstances. The bill would also extend the operation of these provisions until December 31, 2019.

~~(4) Existing law, until January 1, 2013, and subject to exceptions, requires that in the case of any foreclosure on a residential property, the immediate successor in interest in the property pursuant to the foreclosure shall attach a cover sheet, as specified, to any notice of termination of tenancy served on a tenant of that property within the first year after the foreclosure sale.~~

~~This bill would extend the operation of these provisions until December 31, 2019.~~

~~(5)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924.8 of the Civil Code is amended to
2 read:

3 2924.8. (a) (1) Upon posting a notice of sale pursuant to
4 Section 2924f, a trustee or authorized agent shall also post the
5 following notice, in the manner required for posting the notice of
6 sale on the property to be sold, and a mortgagee, trustee,
7 beneficiary, or authorized agent, concurrently with the mailing of
8 the notice of sale pursuant to Section 2924b, shall send by
9 first-class mail in an envelope addressed to the "Resident of
10 property subject to foreclosure sale" the following notice in English
11 and the languages described in Section 1632:
12

13 Foreclosure process has begun on this property, which may affect
14 your right to continue to live in this property. Twenty days or more

1 after the date of this notice, this property may be sold at
2 foreclosure. If you are renting this property, the new property
3 owner may either give you a new lease or rental agreement or
4 provide you with a 90-day eviction notice. You may have a right
5 to stay in your home for longer than 90 days. If you have a
6 fixed-term lease, the new owner must honor the lease unless the
7 new owner will occupy the property as a primary residence or in
8 other limited circumstances. Also, in some cases and in some cities
9 with a “just cause for eviction” law, you may not have to move at
10 all. All rights and obligations under your lease or tenancy, including
11 your obligation to pay rent, will continue after the foreclosure sale.
12 You may wish to contact a lawyer or your local legal aid office or
13 housing counseling agency to discuss any rights you may have.

14
15 (2) The amendments to the notice in this subdivision made by
16 the act that added this paragraph shall become operative on March
17 1, 2013, or 60 days following posting of a dated notice
18 incorporating those amendments on the Department of Consumer
19 Affairs Internet Web site, whichever date is later.

20
21 (b) It shall be an infraction to tear down the notice described in
22 subdivision (a) within 72 hours of posting. Violators shall be
23 subject to a fine of one hundred dollars (\$100).

24 (c) The Department of Consumer Affairs shall make available
25 translations of the notice described in subdivision (a) which may
26 be used by a mortgagee, trustee, beneficiary, or authorized agent
27 to satisfy the requirements of this section.

28 (d) This section shall only apply to loans secured by residential
29 real property, and if the billing address for the mortgage note is
30 different than the property address.

31 (e) This section shall remain in effect only until December 31,
32 2019, and as of that date is repealed, unless a later enacted statute,
33 that is enacted before December 31, 2019, deletes or extends that
34 date.

35 SEC. 2. Section 415.46 of the Code of Civil Procedure is
36 amended to read:

37 415.46. (a) In addition to the service of a summons and
38 complaint in an action for unlawful detainer upon a tenant and
39 subtenant, if any, as prescribed by this article, a prejudgment claim
40 of right to possession may also be served on any person who

1 appears to be or who may claim to have occupied the premises at
2 the time of the filing of the action. Service upon occupants shall
3 be made pursuant to subdivision (c) by serving a copy of a
4 prejudgment claim of right to possession, as specified in
5 subdivision (f), attached to a copy of the summons and complaint
6 at the same time service is made upon the tenant and subtenant, if
7 any.

8 (b) Service of the prejudgment claim of right to possession in
9 this manner shall be effected by a marshal, sheriff, or registered
10 process server.

11 (c) (1) When serving the summons and complaint upon a tenant
12 and subtenant, if any, the marshal, sheriff, or registered process
13 server shall make a reasonably diligent effort to ascertain whether
14 there are other adult occupants of the premises who are not named
15 in the summons and complaint by inquiring of the person or
16 persons who are being personally served, or any person of suitable
17 age and discretion who appears to reside upon the premises,
18 whether there are other occupants of the premises.

19 (2) If the identity of such an occupant is disclosed to the officer
20 or process server and the occupant is present at the premises, the
21 officer or process server shall serve that occupant with a copy of
22 the prejudgment claim of right to possession attached to a copy of
23 the summons and complaint. If personal service cannot be made
24 upon that occupant at that time, service may be effected by leaving
25 a copy of a prejudgment claim of right to possession attached to
26 a copy of the summons and complaint addressed to that occupant
27 with a person of suitable age and discretion at the premises, affixing
28 the same so that it is not readily removable in a conspicuous place
29 on the premises in a manner most likely to give actual notice to
30 that occupant, and sending the same addressed to that occupant
31 by first-class mail.

32 (3) In addition to the service on an identified occupant, or if no
33 occupant is disclosed to the officer or process server, or if
34 substituted service is made upon the tenant and subtenant, if any,
35 the officer or process server shall serve a prejudgment claim of
36 right to possession for all other persons who may claim to occupy
37 the premises at the time of the filing of the action by leaving a
38 copy of a prejudgment claim of right to possession attached to a
39 copy of the summons and complaint at the premises at the same
40 time service is made upon the tenant and subtenant, if any, affixing

1 the same so that it is not readily removable in a conspicuous place
2 on the premises so that it is likely to give actual notice to an
3 occupant, and sending the same addressed to “all occupants in care
4 of the named tenant” to the premises by first-class mail.

5 (4) The person serving process shall state the date of service on
6 the prejudgment claim of right to possession form. However, the
7 absence of the date of service on the prejudgment claim of right
8 to possession does not invalidate the claim.

9 (d) Proof of service under this section shall be filed with the
10 court and shall include a statement that service was made pursuant
11 to this section. Service on occupants in accordance with this section
12 shall not alter or affect service upon the tenant or subtenant, if any.

13 (e) (1) If an owner or his or her agent has directed and obtained
14 service of a prejudgment claim of right to possession in accordance
15 with this section, no occupant of the premises, whether or not that
16 occupant is named in the judgment for possession, may object to
17 the enforcement of that judgment as prescribed in Section 1174.3.

18 (2) In any action for unlawful detainer resulting from a
19 foreclosure sale of a rental housing unit pursuant to Section 1161a,
20 paragraph (1) shall not limit the right of any tenant or subtenant
21 of the property to file a prejudgment claim of right of possession
22 pursuant to subdivision (a) of Section 1174.25 at any time before
23 judgment, or to object to enforcement of a judgment for possession
24 as prescribed in Section 1174.3, whether or not the tenant or
25 subtenant was served with a prejudgment claim of right to
26 possession.

27 (f) The prejudgment claim of right to possession shall be made
28 on the following form:

1 *PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE*
2 *INSERTED*

- 1 PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE
- 2 INSERTED

1

1 SEC. 3. Section 1161b of the Code of Civil Procedure is
2 amended to read:

3 1161b. (a) Notwithstanding Section 1161a, a tenant or
4 subtenant in possession of a rental housing unit under a
5 month-to-month lease or periodic tenancy at the time the property
6 is sold in foreclosure shall be given 90 days' written notice to quit
7 pursuant to Section 1162 before the tenant or subtenant may be
8 removed from the property as prescribed in this chapter.

9 (b) In addition to the rights set forth in subdivision (a), tenants
10 or subtenants holding possession of a rental housing unit under a
11 fixed-term residential lease entered into before transfer of title at
12 the foreclosure sale shall have the right to possession until the end
13 of the lease term, and all rights and obligations under the lease
14 shall survive foreclosure, except that the tenancy may be terminated
15 upon 90 days' written notice to quit pursuant to subdivision (a) if
16 any of the following conditions apply:

17 (1) The purchaser or successor in interest will occupy the
18 housing unit as a primary residence.

19 (2) The lessee is the mortgagor or the child, spouse, or parent
20 of the mortgagor.

21 (3) The lease was not the result of an arms' length transaction.

22 (4) The lease requires the receipt of rent that is substantially
23 less than fair market rent for the property, except when rent is
24 reduced or subsidized due to a federal, state, or local subsidy or
25 law.

26 (c) The purchaser or successor in interest shall bear the burden
27 of proof in establishing that a fixed-term residential lease is not
28 entitled to protection under subdivision (b).

29 (d) This section shall not apply if any party to the note remains
30 in the property as a tenant, subtenant, or occupant.

31 (e) Nothing in this section is intended to affect any local just
32 cause eviction ordinance. This section does not, and shall not be
33 construed to, affect the authority of a public entity that otherwise
34 exists to regulate or monitor the basis for eviction.

35 (f) This section shall remain in effect only until December 31,
36 2019, and as of that date is repealed, unless a later enacted statute,
37 that is enacted before December 31, 2019, deletes or extends that
38 date.

39 ~~SEC. 4. Section 1161c of the Code of Civil Procedure is~~
40 ~~amended to read:~~

~~1161c. (a) In the case of any foreclosure on a residential property, the immediate successor in interest in the property pursuant to the foreclosure shall attach a cover sheet, in the form as set forth in subdivision (b), to any notice of termination of tenancy served on a tenant of that property within the first year after the foreclosure sale. This notice shall not be required if any of the following apply:~~

~~(1) The tenancy is terminated pursuant to Section 1161.~~

~~(2) The successor in interest and the tenant have executed a written rental agreement or lease or a written acknowledgment of a preexisting rental agreement or lease.~~

~~(3) The tenant receiving the notice was not a tenant at the time of the foreclosure.~~

~~(b) The cover sheet shall consist of the following notice, in at least 12-point type:~~

~~—~~

~~Notice to Any Renters Living At~~

~~{street address of the unit}~~

~~The attached notice means that your home was recently sold in foreclosure and the new owner plans to evict you.~~

~~You should talk to a lawyer NOW to see what your rights are. You may receive court papers in a few days. If your name is on the papers it may hurt your credit if you do not respond and simply move out.~~

~~Also, if you do not respond within five days of receiving the papers, even if you are not named in the papers, you will likely lose any rights you may have. In some cases, you can respond without hurting your credit. You should ask a lawyer about it.~~

~~You may have the right to stay in your home for 90 days or longer, regardless of any deadlines stated on any attached papers. In some cases and in some cities with a “just cause for eviction law,” you may not have to move at all. But you must take the proper legal steps in order to protect your rights.~~

~~How to Get Legal Help~~

~~If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.~~

1 —

2 (e) ~~If the notice to quit specifies an effective date of at least 90~~
3 ~~days after the notice is served, without qualification, no cover sheet~~
4 ~~shall be required, provided that the notice incorporates the text of~~
5 ~~the cover sheet, as set forth in subdivision (b) in at least 10-point~~
6 ~~type. The incorporated text shall omit the caption and the first~~
7 ~~paragraph of the cover sheet and the fourth paragraph of the cover~~
8 ~~sheet shall be replaced by the following language:~~

9 —

10 You may have the right to stay in your home for longer than 90
11 days. If you have a lease that ends more than 90 days from now,
12 the new owner must honor the lease under many circumstances.
13 Also, in some cases and in some cities with a “just cause for
14 eviction law,” you may not have to move at all. But you must take
15 the proper legal steps in order to protect your rights.

16 —

17 (d) ~~This section shall remain in effect only until December 31,~~
18 ~~2019, and as of that date is repealed, unless a later enacted statute,~~
19 ~~that is enacted before December 31, 2019, deletes or extends that~~
20 ~~date.~~

21 ~~SEC. 5.~~

22 *SEC. 4.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.